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Supreme Court of the United States

OCTOBER TERM, 1961

No. 73

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, PETITIONERS,

vs.

LION DRY GOODS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 27, 1961
CERTIORARI GRANTED MAY 8, 1961

SUPREME COURT OF THE UNITED STATES

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IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Joint Appendix

Civil No. 8199

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, Plaintiffs,

v.

LION DRY GOODS, INC., and LASALLE'S, A Division of R. H. Macy & Co., Defendants.

DOCKET ENTRIES

4/15/59. Complaint filed. Summons issued. Two copies of summons and two copies of complaint to U. S. Marshal.

4/23/59. Summons returned, served 4/17/59, and filed. $4.20.

5/5/59. Application of defendants for extension of time to move, plead or answer to 5/22/59 filed. Mailed 5/5/59.

5/7/59. Order granting application of defendants for extension of time filed. FLK. Defendant granted until 5/22/59 to move, plead or answer. Copies 77d to Finley and Green.

5/19/59. Motion of Defendants to make definite and certain and to strike filed.

5/19/59. Memorandum in support filed. Copies of motion and memo. mailed 5/19/59.

5/28/59. Memorandum of plaintiff in response to motions of defendant to make more definite and certain and to strike filed. Mailed 5/27/59.

[fol. 2] 6/2/59. Memorandum of the Court filed. FLK. Motions to be sustained, in part and overruled in part. Plaintiffs may file an amended complaint within 20 days. Copies to Finley and Green.

6/2/59. Order sustaining defendant's motion requiring the complaint to be made definite and certain and that portion of the motion for order to strike from the complaint is overruled without prejudice filed. FLK. Copies 77d to Finley and Green.

6/19/59. Amended Complaint for Injunction filed. Copy mailed 6/18/59.

6/29/59. Answer to Amended Complaint filed. Mailed 6/29/59.

8/28/59. Notice to attend pre-trial conference 10/8/59, mailed.

9/18/59. Trial brief on behalf of defendants filed.

9/28/59. Trial brief on behalf of plaintiff filed.

10/7/59. Pretrial order that cause will be submitted on facts and briefs to be exchanged as follows, plaintiff's brief —10/16/59, deft's. brief—10/26/59, plaintiff's reply brief— 11/2/59, and cause is assigned for argument, November 6, 1959 at 11:00 A. M., and filed. FLK. Copies to Finley and Green.

10/15/59. Brief of Plaintiffs filed. Served 10/14/59.

10/26/59. Answer brief of defts. filed. Mailed 10/26/59.

11/2/59. Reply brief of plaintiffs filed. Mailed 10/30/59.

11/6/59. Clerk's minutes of proceedings filed. Trial to Court begun and concluded. Plaintiff granted leave to amend complaint. Cause submitted on stipulation, briefs and argument of counsel.

11/6/59. Stipulation of facts filed.

12/21/59. Memorandum opinion of the Court filed. FLK. Defendants to file findings of fact and conclusions of law within 15 days and plaintiffs to file amendments or additions 10 days thereafter. Copies to Finley and Green.

1/12/60. Findings of fact and conclusions of law of defendant lodged.

1/20/60. Order and judgment lodged.

[fol. 3] 1/29/60. Findings of fact and conclusions of law filed. FLK. Copies to Finley and Green.

1/29/60. Order and judgment filed and entered. FLK 16. Complaint is dismissed at plaintiff's costs. Copies 77d to Finley and Green.

IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT FOR INJUNCTION—Filed June 19, 1959

First Cause of Action

1. Plaintiffs are labor organizations with offices and headquarters at the address above listed and represent employees in industries affecting commerce for the purpose of collective bargaining.

2. Defendant Lion Dry Goods Co., Inc., an Ohio corporation, is engaged in operating a retail department store at the address above listed and is engaged in a business affecting commerce within the meaning of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 151 et seq. Defendant LaSalle's, a Division of R. H. Macy & Co., a New York corporation, hereinafter referred to as LaSalle's, is engaged in operating a retail department store at the address above named, and is engaged in a business affecting commerce within the meaning of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A. Sec. 151 et seq., hereinafter referred to as the Act.

3. This action is brought pursuant to Sec. 301 (a) and (b) of the Act.

4. Plaintiffs were the lawfully recognized collective bargaining representatives of employees of defendants for

many years prior to 1957 and were parties to collective bargaining contracts with defendants for many years prior to 1957. In 1957, plaintiffs undertook to negotiate new collective bargaining contracts with defendants but failed to [fol. 4] reach agreement. Plaintiffs thereupon went on strike against defendant LaSalle's and continued their dispute with defendant Lion Dry Goods Co., Inc., hereinafter referred to as Lion Store, until Dec. 24, 1958, as will be further set forth hereinafter.

5. On Dec. 24, 1958, plaintiffs agreed to end their strike against defendant LaSalle's and agreed to end their dispute with defendant Lion Store and as an integral part of such agreement, and in consideration of written promises and assurances given by defendants to the Toledo Labor-Management-Citizens Committee for the benefit of plaintiffs, under same date, gave assurances both to defendants and to the Toledo Labor-Management-Citizens Committee, which was engaged in attempting to work out a settlement and an agreement by and between the parties, that all strikes, picketing, boycotting, and similar activities would be ceased immediately. Plaintiffs, pursuant to such agreement, did immediately cease all such activities and have carried out all such assurances given on December 24, 1958, fully and completely to date.

6. In consideration of plaintiffs' agreement to immediately discontinue and terminate all strikes, picketing, boycotts, disputes and similar activities, defendants on December 24, 1958, executed certain documents setting forth acts to be performed by defendants and plaintiffs and delivered such documents to Msgr. Michael J. Doyle, chairman of the aforesaid Toledo Labor-Management-Citizens Committee. Plaintiffs thereafter formalized their agreement by giving assurances in writing to Msgr. Michael J. Doyle. The aforementioned documents, attached hereto and made a part hereof, are as follows:

Exhibit A—a true copy of letter of December 24, 1958, from defendant LaSalle's, signed by Michael Yamin, President, to Msgr. Michael J. Doyle.

Exhibit B—a true copy of attachment to letter of December 24, 1958, from defendant LaSalle's to Msgr. Michael J. Doyle, with exhibits thereto.

Exhibit C—a true copy of letter dated December 30, 1958, from plaintiffs to Msgr. Michael J. Doyle, formalizing [fol. 5] acceptance of terms and conditions contained in Exhibits A and B.

Exhibit D—a true copy of letter of December 24, 1958, from defendant Lion Store, signed by Donald Ross, President, to Msgr. Michael J. Doyle.

Exhibit E—a true copy of attachment to letter of December 24, 1958, from defendant Lion Store to Msgr. Michael J. Doyle. Exhibits to such attachment are the same in every respect as those set forth in Exhibit B above.

Exhibit F—a true copy of letter dated December 30, 1958, from plaintiffs to Msgr. Michael J. Doyle, formalizing acceptance of terms and conditions contained in Exhibits D and E.

The aforesaid mutual agreements, assurances, and declarations of plaintiffs and defendants constituted contracts within the meaning of Sec. 301 (a) and (b) of the Act. In such contracts, defendants agreed that any majority decision and order of the Labor-Management-Citizens Committee panel empowered to pass upon disputes arising under such agreements would be final and binding.

7. Such contracts and documents, contained agreements by defendants that nothing would preclude plaintiffs as employee representatives from communicating with employees, provided such communication was on the employees' non-working time and in no way interfered with operation of the business of defendants. Defendants thereupon interfered with such rights in violation of the agreements of December 24, 1958, plaintiffs thereafter protested such interference, and requested and petitioned the Labor-Management-Citizens Committee panel to hear, decide, and arbitrate such case, dispute, or controversy and render a decision thereon with regard to what rights plaintiffs had under the aforesaid agreements of December 24, 1958.

8. A panel of the Labor-Management-Citizens Committee under the chairmanship of Msgr. Michael J. Doyle thereafter held a hearing on such case or dispute on March 5, 1959, and on March 12, 1959, transmitted its decision to the parties, holding, inter alia, that plaintiffs should have [fol. 6] freedom to contact employees during recess or lunch periods in employee cafeterias as well as in public cafeterias. Such decision further said, "It must be viewed as a breach of faith on the part of management to create a place where union organizers cannot solicit union membership."

9. Defendants thereafter requested reconsideration of the decision of the Labor-Management-Citizens panel with regard to the decision above mentioned and on April 7, 1959, the aforesaid Labor-Management-Citizens panel, by Msgr. Michael J. Doyle, chairman, reaffirmed its decision of March 12, 1959. A true copy of a letter from Msgr. Doyle to counsel for defendants is attached hereto and made a part hereof as Exhibit G.

10. Defendants have openly, wantonly, and deliberately refused to obey such decision and order of the Labor-Management-Citizens panel and have denied plaintiffs the rights accorded them by the aforesaid decision and have announced their intention to continue to deny plaintiffs such rights, regardless of any decision of the Labor-Management-Citizens panel, all in violation of defendants' agreement of December 24, 1958, to accept any decision and order of the Labor-Management-Citizens panel as final and binding.

Second Cause of Action

11. Plaintiffs repeat and reallege each and every allegation of paragraphs numbered 1, 2, 3, 4, 5, and 6 only with respect to such allegations as pertain to defendant LaSalle's. No part of this second cause of action has any reference or application to the defendant Lion Store.

12. At LaSalle's, two employees named Loretta Thal and Goldie McGinnis filed grievances pursuant to the aforesaid agreements of December 24, 1958, alleging violations

of their rights of restoration to the jobs they held prior to the beginning of the strike in 1957 and such grievances were processed in accordance with such agreements, were presented by plaintiffs, and were heard by the Labor-Manage-
[fol. 7] ment-Citizens panel on March 5, 1959. Such grievances were filed with officials of defendant LaSalle's after February 2, 1959, and alleged in substance that LaSalle's was in violation of the settlement agreement of December 24, 1958, in not restoring Thal and McGinnis to the jobs they held prior to November 23, 1957.

13. On March 12, 1959, the Labor-Management-Citizens panel ruled that employees Thal and McGinnis should be restored to their former positions by defendant LaSalle's and such decision was communicated to the parties, including plaintiffs as representatives of employees Thal and McGinnis.

14. Defendant LaSalle's has failed, refused, and neglected to accept and honor the aforesaid decision of the Labor-Management-Citizens panel as final and binding, all in violation of the agreement of December 24, 1958.

Wherefore, plaintiffs pray for judgment as follows:

On the First Cause of Action

Plaintiffs pray for an order of this Court restraining and enjoining defendants from violating the agreements of December 24, 1958, by refusing to accept and honor the decision of the Labor-Management-Citizens panel as final and binding and from interfering with rights granted plaintiffs by the aforesaid decision of the Labor-Management-Citizens panel and from further denying plaintiffs such rights of communication with employees of defendants in employee cafeterias as has been granted by the aforesaid decision of the Labor-Management-Citizens panel.

On the Second Cause of Action

Plaintiffs pray for an order of this Court restraining and enjoining defendant LaSalle's from violating the agreements of December 24, 1958, by refusing to abide by the

decision of the Labor-Management-Citizens panel ordering and directing restoration of Loretta Thal and Goldie McGinnis to their prior jobs with defendant LaSalle's.

Joseph E. Finley, Attorney for Plaintiffs.

[fol. 8]

EXHIBIT A TO AMENDED COMPLAINT

(Copy)

THE LASALLE & KOCH COMPANY

Toledo, Ohio

December 24, 1958

Msgr. Michael Doyle, Chairman,
Labor-Management-Citizens Committee,
Toledo, Ohio

Dear Sir:

In accordance with previous commitments made to you on our behalf, we hand you herewith a statement of understanding, with exhibits, which set forth therein the basis on which the heretofore existing dispute between the Retail Clerks International Association, its Locals No. 633 and No. 128, and our company is to be fully and finally resolved.

The conditions to be performed and met by us are, of course, subject to and conditioned upon the receipt by your organization of guarantees from the respective labor organizations to make the principles enumerated herein completely effective.

We are fully aware that the ultimate and complete success of your efforts in this endeavor will depend upon the good faith which is necessarily a part of any representations made to you. It is in this spirit that we are pleased to hand you this statement of intent with its necessary assurances.

Sincerely yours,

/s/ MICHAEL YAMIN

Michael Yamin,
President.

EXHIBIT B TO AMENDED COMPLAINT

1. Employees of Lasalle's, who have been absent due to the strike, will be re-instated without discrimination because of any strike activities and without loss of seniority [fol. 9] provided they make application for reinstatement in the form and manner provided for by the employer within fifteen days of receipt of notice from the employer.

2. All such employees who have complied with the provisions of Paragraph 1 above, will be returned to work not later than February 2, 1959, as scheduled by the Company, in their former position classifications if vacant or in positions comparable in duties and earning opportunities.

3. It is understood that returning strikers will devote their best efforts to their work and to serving the customers of Lasalle's, recognizing that stability of employment depends upon the success of the business.

4. Lasalle's will warrant to the L-M-C that the Company will not reduce rates of pay presently in effect or withdraw or reduce employee benefit programs currently provided. This assurance includes all improvements offered by the Company through the L-M-C on November 15th, 1957, which are already in effect. No employee will be discriminated against, by reason of Union activities, membership or non-membership. All employees will continue to have job security and no employee will be discharged except for just cause. Wage schedules currently in effect are appended as Exhibit A. Copies of hours and working conditions and other existing benefits, as requested by L-M-C are attached as Exhibit B.

5. Neither the Company nor the Union will interfere with the employee's right to join or not to join a union, as provided and guaranteed by the Labor-Management-Relations Act. Nothing contained herein is to be construed as giving recognition to the union unless at some future time within the discretion of the union, the union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board.

6. The Union agrees that it will not request bargaining rights unless it proves its right to represent the employees [fol. 10] as provided in Paragraph 5 above; nor will the employer recognize any union except upon certification by the N.L.R.B.; nor will the Company file a petition for election unless a claim for representation is made upon the employer. Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business.

7. Any individual employee who may have a grievance involving an interpretation or application of or arising under the terms of this understanding with the L-M-C, and who has presented such grievance to his supervisor and the Personnel Department without reaching a satisfactory solution, may take his case to the chairman of the L-M-C who in turn shall refer the case to a panel of the L-M-C. whose majority decision and order shall be final and binding. The panel shall render its decision and order within fifteen days after the grievance has been submitted to it. The procedure regulating the hearing of the grievance by the L-M-C panel shall be determined by the panel.

8. The Union will agree that immediately upon receipt of this statement of understanding by the Toledo Labor-Management-Citizens Committee it will cease all picketing, boycotting or other interference with the business of Lasalle's, or R. H. Macy & Co., Inc. wherever located. The Union, the strikers, and the Company shall withdraw forthwith all petitions, unfair labor practice charges and litigation before the National Labor Relations Board and the Courts and further agree not to institute in the future any litigation involving or arising out of the instant dispute. The Union and the Employer shall execute mutually satisfactory releases, releasing and discharging each other, the International Union, the local unions involved, and representatives of the union in their representative or individual capacity, labor papers, and all other labor organizations or their representatives who acted in concert or

[fol. 11] cooperation in connection with the dispute, from any and all claims, demands, causes of action, of whatever nature or description arising out of the labor dispute, including but not limited to the strikes, picketing, boycotting, and all other activities which may have taken place up to the present date.

9. This understanding shall become effective in accordance with the letter of transmittal dated December 24, 1958.

LASALLE & KOCH DIVISION OF THE R. H. MACY CO., INC.,

/s/ By: MICHAEL YAMIN.

(Exhibit A)

WAGE SCHEDULE FOR SEWERS AND FITTERS

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time garment workers shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rates for experienced full-time garment workers covered by this schedule shall be as set forth below. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

SEWERS:	Effective 11/1/57	Effective 9/1/58
First 6 months	$ 49.30	$ 52.10
6 to 12 months	51.55	54.35
12 to 24 months	54.85	57.60
After 24 months	59.30	62.10
FITTERS:		
First 6 months	$ 57.30	$ 60.10
6 to 12 months	58.80	61.60
After 12 months	61.80	64.60

[fol. 12] Promotion for fitters shall be made from the seamstress list provided the person is capable and has ability to perform the work.

To further the interest in the needle trades, it is desirable to employ students from the Vocational School on the cooperative basis; that is to say, the student will go to school one week and work in the alteration room the next week. The stores and the school will try to work out a satisfactory arrangement which will guarantee the proper and adequate education of the student, and fit her for a needle trades occupation when her high school curriculum is finished.

Each store may employ two apprentices for each five (5) regular members of its staff. To clarify this point, if a store were to have twelve (12) sewers and three (3) fitters, it would be permissible to employ a total of three (3) apprentices each week.

During this apprenticeship period and while the pupil is still in school, the salary shall follow the same progression as other cooperatives employed in the store.

No apprentice will be subject to lay-off on a seniority basis. Every apprentice will hold her job on an alternative week basis regardless of seasonal changes in the industry, so long as the five-to-two ratio is maintained.

Apprentices on an alternate week basis will not accrue any seniority. Upon graduation they will be employed on the same basis as any new person.

WAGE SCHEDULE FOR SELLING AND NON-SELLING EMPLOYEES GENERALLY

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time sales employees stockroom employees and office employees shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule shall be as set forth below. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

[fol. 13]

SELLING:

Sales Clerks, Women	Effective 11/1/57	Effective 9/1/58
First 2 months	$ 42.80	$ 45.60
2 to 4 months	45.05*	47.85*
4 to 6 months	47.05*	49.85*
6 to 12 months	48.30*	51.10*
After 12 months	49.80*	52.60*
Sales Clerks — Men		
First 3 months	46.80	49.60
3 to 12 months	50.80*	53.60*
After 12 months	54.80*	57.60*

NON-SELLING:

Office Help	Effective 11/1/57	Effective 9/1/58
Wrappers-Cashiers-Receiving and Stock — Women		
First 2 months	43.80	46.60
2 to 4 months	46.05	48.85
4 to 6 months	48.05	50.85
6 to 12 months	49.30	52.10
After 12 months	50.80	53.60
Receiving Reserve Stockmen and Checkers — Men		
First 2 months	45.80	48.60
2 to 4 months	47.80	50.60
4 to 6 months	50.05	52.85
6 to 12 months	52.05	54.85
12 to 18 months	54.30	57.10
After 18 months	56.80	59.60
Receiving Openers and Platform Clerks — Men		
First 2 months	47.80	50.60
2 to 4 months	51.05	53.85
4 to 6 months	54.05	56.85
6 to 12 months	56.30	59.10
After 12 months	58.80	61.60

*Plus a commission of 1% on sales made by the individual during the week.

[fol. 14]

Telephone Operators — Women

First 3 months	44.80	47.60
3 to 12 months	47.05	49.85
12 to 24 months	50.30	53.10
After 24 months	51.80	54.60

WAGE SCHEDULE FOR STRAIGHT COMMISSION EMPLOYEES

(Other than Shoe Clerks)

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time employees covered by this schedule shall be forty (40) hours to be worked in five (5) days.

(b) The commission rate for sales clerks in furniture, floor coverings, men's clothing, major appliances and radios shall be five and one-half (5½%) percent on net sales. Such employees shall receive a guarantee of Three Hundred Dollars ($300.00) monthly for a four (4) week pay period and Three Hundred Seventy-five Dollars ($375.00) monthly for a five (5) week pay period. The monthly guarantee shall be advanced in equal weekly amounts of Seventy-five Dollars ($75.00). Commissions shall be computed and paid once a month with no deficit. Merchandise that has been in the customer's hands for forty-five (45) days and is returned will not be charged against such employees. Such employees will be given an itemized statement of the returns giving the date, amount and customer's name.

(c) The commission rate for sales clerks in the dress department, cloth coats and suits, where straight commission is paid, shall be the same as it has been in the past. Such employees shall receive a weekly guarantee with no deficit as follows:

[fol. 15]

		Add to Gross Earnings 11/1/57	Add to Gross Earnings 9/1/58
First 2 months	$ 36.00	$ 4.80	$ 7.60
2 to 4 months	38.25	4.80	7.60
4 to 6 months	40.25	4.80	7.60
6 to 12 months	41.50	4.80	7.60
After 12 months	41.50	8.30	11.10

(After 12 months, those receiving more than $41.50 per week but not over $43.00 per week beginning November 1, 1957, shall have $7.80 added to their gross earnings, and beginning September 1, 1958, shall have $10.60 added to their gross earnings. After 12 months, those receiving more than $43.00 per week beginning November 1, 1957, shall have $7.30 added to their gross earnings, and beginning September 1, 1958, shall have $10.10 added to their gross earnings.)

Merchandise that has been in the customer's hands for ninety (90) days and is returned will not be charged against such employees. Such employees will be given an itemized statement of the returns giving the date, amount and customer's name.

(d) If said guarantee is not earned over a period of ninety (90) days the employee shall be subject to dismissal.

(e) Commission people will be paid time and a half (1½) based on the guarantee for inventory and overtime work. In the case of selling overtime, the overtime shall be applied as follows: One-half (½) the Overtime payment shall be applied to the weekly guarantee and one-half (½) applied to gross earnings. In the case of non-selling overtime work, the overtime payment shall be added to gross earnings.

[fol. 16]

WAGE SCHEDULE FOR CUSTOMER SERVICE BUREAU FLOOR REPRESENTATIVES

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time customer service bureau floor representatives shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule shall be as set forth below. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

	Effective 11/1/57	Effective 9/1/58
First 6 months	$ 49.40	$ 52.10
6 to 12 months	51.05	53.85
12 to 18 months	55.30	58.10
After 18 months	60.30	63.10

WAGE SCHEDULE FOR PUBLICITY AND DISPLAY DIVISION EMPLOYEES

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time technical workers in the Publicity and Display Division, including copywriters, artists, window trimmers, interior trimmers, fixture men and layout assistants, shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule shall in no event be less than set forth below. Short-hour employees shall receive a proportionate share depending upon the hours actually worked in any week.

[fol. 17]

	Effective 11/1/57	Effective 9/1/58
First 3 months	$ 45.80	$ 48.60
3 to 6 months	47.80	50.60
6 to 9 months	50.05	52.85
9 to 12 months	52.05	54.85
12 to 15 months	54.05	56.85
15 to 18 months	56.05	58.85
18 to 21 months	58.30	61.10
21 to 24 months	60.30	63.10
After 24 months	64.30	67.10

WAGE SCHEDULE FOR SHOE CLERKS

Lamson's Lasalle's Lion Store

(a) The normal work week for full-time shoe clerks shall be forty (40) hours to be worked in five (5) days.

(b) The straight time weekly wage rate for full-time employees covered by this schedule, except those employees covered by paragraph (c) below, shall be as set forth. Short-hour employees shall receive a proportionate share depending upon the number of hours actually worked in any week.

Shoe Clerks — Women	Effective 11/1/57	Effective 9/1/58
First 3 months	$ 43.80	$ 46.60
3 to 12 months	46.05	48.85
12 to 24 months	48.30	51.10
After 24 months	50.80	53.60
Shoe Clerks — Men		
First 3 months	47.80	50.60
3 to 12 months	51.05	53.85
12 to 24 months	54.30	57.10
After 24 months	58.30	61.10

[fol. 18] (c) The commission rate for those shoe clerks being paid on a straight commission basis shall be seven

(7%) percent on net sales. Such employees shall receive a weekly guarantee with no deficit as follows:

Shoe Clerks — Women		Add to Gross Earnings 11/1/57	Add to Gross Earnings 9/1/58
First 2 months	$ 36.00	$ 4.80	$ 7.60
2 to 4 months	38.25	4.80	7.60
4 to 6 months	40.25	4.80	7.60
6 to 12 months	41.50	4.80	7.60
After 12 months	41.50	8.30	11.10

(After 12 months, those receiving more than $41.50 per week but not over $43.00 per week beginning November 1, 1957, shall have $7.80 added to their gross earnings, and beginning September 1, 1958, shall have $10.60 added to their gross earnings. After 12 months, those receiving more than $43.00 per week beginning November 1, 1957, shall have $7.30 added to their gross earnings, and beginning September 1, 1958, shall have $10.10 added to their gross earnings.)

Shoe Clerks — Men		Add to Gross Earnings 11/1/57	Add to Gross Earnings 9/1/58
First 3 months	$ 40.00	$ 4.80	$ 7.60
3 to 12 months	44.00	4.80	7.60
After 12 months	46.50	8.30	11.10

(After 12 months, those receiving more than $46.50 per week but not over $48.00 per week beginning November 1, 1957, shall have $7.80 added to their gross earnings, and beginning September 1, 1958, shall have $10.60 added to their gross earnings. [fol. 19] After 12 months, those receiving more than $48.00 per week beginning November 1, 1957, shall have $7.30 added to their gross earnings, and begin-

ning September 1, 1958, shall have $10.10 added to their gross earnings.)

1. If the stated guarantee is not earned over a period of ninety (90) days the employee shall be subject to dismissal.

2. Merchandise that has been in the customer's hands for ninety (90) days and is returned will not be charged against sales persons. Shoe Clerks will be given an itemized statement of the returns, giving the date, amount and customer's name.

3. Straight commission people will be paid time and a half (1½), based on the guarantee for inventory and overtime work. In the case of selling overtime, the overtime shall be applied as follows: One-half (½) the overtime payment shall be applied to the weekly guarantee and one-half (½) applied to gross earnings. In the case of non-selling overtime work, the overtime payment shall be added to gross earnings.

(Exhibit B.)

COMPANY PERSONNEL POLICY AND PROGRAM

1. Seniority will apply to all regular employees after two (2) months of service from date of employment in adding to, or reducing the force as well as promotions.

2. There are four (4) classifications of employees, designated as follows:

(a) Regular full-time employees

(b) Regular short-hour employees

(c) Extra employees

(d) Casual employees

3. The above cited classifications are as follows:

(A) A regular full-time employee is one who has been employed to work forty (40) hours per five-day week and an employee continuously so employed at least two (2) months is considered a regular full-time employee.

[fol. 20] (B) A regular short-hour employee is one who has been employed to work at least twenty (20) hours per week but less than forty (40) hours per five-day week and any employee continuously so employed for at least two (2) months is considered a regular short-hour employee.

(C) An extra employee is one employed for promotions, sales, seasonal events, vacation periods, etc.

(D) A casual employee is one employed for temporary work, including the Christmas season—thus any employee hired during the period October 15th to December 15th shall be considered a casual employee unless and until such employee is retained after January 15th of the subsequent year following the Christmas season. In such event, the retained employee will be classified under (A) (B) (C) or (D) and his seniority will begin two months after the date of his hiring.

4. Regular full-time employees will have seniority over regular short-hour employees and regular short-hour employees will have seniority over extra employees.

5. If the Company reduces the weekly hours of work of a full-time employee, such affected employee will have the first consideration for the full-time position in the department, in which the hours were reduced, when that full-time position is again available upon a full-time basis.

6. If, however, a full-time employee, whose hours have been reduced, elects to transfer to another department to obtain full-time employment, in accordance with such employee's seniority rights, then such employee will be eligible to return to the department in which the hours were reduced, if such is completed within a two (2) months period from the time the reduction in hours became effective, and then in accordance with the schedule of hours in effect for the previously held position.

7. In the application of this Company Personnel Policy and Program the employee's employment record with the Company will be controlling.

[fol. 21] 8. In the event layoffs occur, the classifications (A) (B) (C) will be followed in reverse order until no further layoffs are necessary and in recalling laid-off employees the last employee laid off will be the first to be recalled and this method will continue until all necessary laid-off employees are recalled.

9. In promotions, transfers, and/or recalls, Store conditions with respect to available work, and the adaptability or qualifications of the employee involved will be given prior consideration.

10. Promotions or transfers to other towns or to other stores will be optional on the part of the employee concerned and there will be no discrimination against the employee, should he or she decline such transfer or promotion.

11. Seniority will be broken only for the following reasons:

(A) Voluntary termination of employment by the employee.

(B) Discharge for just cause.

(C) Failure to notify the Personnel Office of the Company of intention to return to work within seventy-two (72) hours after notice of recall has been sent by the Company, by registered mail, return receipt requested, to the laid-off employee to such employee's last known address on file with the Company.

(D) Failure to report absence from work within three (3) working days without reasonable excuse.

(E) Overstaying leave of absence without approval of the Company.

(F) Accepting other employment while on leave of absence.

(G) Accepting severance pay.

(H) Voluntary Retirement or Retirement under the Company's Pension and/or Retirement Plan.

[fol. 22] (I) Continuous layoff of four (4) consecutive months with extension granted in the event of illness or injury which prevents the employee from working at the time of recall.

(J) Such extensions shall be limited to four (4) months.

12. The Company will maintain complete seniority lists. An employee will, upon request, be informed of his seniority status.

13. All employees on reporting for work and at quitting time are to punch the time clock or time record within the fifteen (15) minute period prior to his or her starting time and within the fifteen (15) minute period after his or her quitting time, without overtime compensation.

14. Employees requested to report for work prior to or after the specified time stated above, will be paid for all such time worked before his or her scheduled starting time or after his or her scheduled quitting time except that no employee will be paid for overtime unless the Superintendent or an individual designated by the Company shall approve requisitions.

15. All employees are to record their time on time clocks or other time records. If there is any question as to the length of time any employee works, the time card or time record will be made available to the employee.

16. Employees requested to report for work and not given such work when reporting, will be paid for at least four (4) hours of employment unless previously notified by telephone, telegraph or otherwise not to report.

17. The hourly rates, commissions, and the hours of the work-week set forth in Exhibit A will not be reduced. Whether mentioned in such schedules or not, the wage rates contained therein shall be minimum.

18. Any commissions, bonuses, or p.m.s. that may be paid to employees are not to be considered part of the employee's minimum wages.

[fol. 23] 19. Mail and telephone orders will be distributed to the sales people in the departments in an equitable manner.

20. Sales made by buyers or assistant buyers in furniture, rugs, major appliances, radio and television will be turned over to the next-up regular salesman. In the other departments, sales made by the buyers or assistant buyers will be turned over to the regular sales people on the next-up basis. In lieu of this method, the department may elect a pooling method for such sales, less returns, to be divided equally among the regular sales force.

21. Employees in selling and indirect selling departments who because of their duties are required to be in the stores before the stores are open to customers and after the closing of the stores to customers, may have their hours so scheduled that they shall start fifteen (15) minutes before the stores are open to customers in the morning and leave five (5) minutes after the stores are closed to customers in the afternoon.

22. A rest period of fifteen (15) minutes will be granted between the opening hour and the lunch period and between the lunch and closing.

23. Each employee will be notified of his work schedule in advance and any employee absent, because of illness, on a day other than his day off will not make up the absent day by working on the scheduled day off without the approval of the Personnel Office and then only at straight time.

24. The overtime rate for regular short-hour employees will not be paid until the employee exceeds the number of hours in the daily or weekly full time work schedule for regular full-time employees in his classification. The overtime rate for regular full-time employees will be paid when the employee exceeds his daily full-time work schedule.

25. There will be no overtime worked in any department where regular full-time or regular short-hour employees are laid off or working short hours, except when it is neces-
[fol. 24] sary to provide for peak periods of the day. Extra

employees will not be hired to work other than store hours at work regularly done by regular employees to avoid overtime pay, but the regular employees will have the preference of the overtime work.

26. All overtime will be paid for at the rate of time and one-half (1½) for all work performed in excess of the normal work-week, except on Sundays and holidays and the schedules attached for straight commission people. All overtime will be paid for and in no event will time off be granted in lieu of payment for overtime.

27. Double time will be paid for work on Sundays or any of the following holidays: New Year's Day, Thanksgiving Day, Christmas Day, Decoration Day, Fourth of July, and Labor Day (in the event of any of these days falling on a Sunday, the following Monday will be observed), except for watchmen. If a regular employee has worked the day before a holiday and the day after a holiday, he is to be paid for the holiday; or if he works before the holiday and is willing to work the day after the holiday, but is not called, he shall be paid for the holiday.

28. All inventory work done before or after scheduled hours will be paid for at the rate of time and one-half (1½).

29. All meetings called by the Company for employees will be paid for at overtime rates if attendance is compulsory, except when said meetings are held during regular store hours, and except when meetings are called before or after store hours for the purpose of instruction and/or fashion shows when straight time is to be paid. No production work is to be done during the period when such straight-time rate is being paid.

30. All time spent by straight commission employees manning booths at home or sport shows, held any place outside of the stores, will be considered non-selling time and pay for such time will be based on average earnings. Hours before or after the regular store hours will be paid for at time and one-half (1½) the average hourly earnings.

[fol. 25] 31. Leave of absence with right to seniority upon return to work the same as he was rated before taking such leave may be granted any regular employee at the discretion of the Company. If said leave of absence is granted for any other reason than illness, said leave of absence will be limited to thirty (30) days, except in unusual cases.

32. Three (3) days' leave will be granted with full pay in the event of a death in the immediate family of any regular employee. By immediate family is meant child, father, mother, brother, sister, or any relative living in the home of the employee or with whom the employee is living.

33. The Company will not discharge any employee except for just cause.

34. In cases of inefficiency the employee will receive prior warning and be given an opportunity to improve prior to final action. There will be a minimum period of thirty (30) days between the warning-notice date and the date of actual action upon the part of the store, except in unusual cases.

35. In the event of termination of employment due to lack of work or discharge, regular employees after six months of service and up to two years of service will receive termination pay of one week's basic salary or its equivalent; regular employees after two years of service will receive two weeks' basic salary or its equivalent and thereafter an additional week's basic salary or its equivalent for each additional year of service up to a total of five weeks will be given. This provision is not to apply to employees discharged for dishonesty or insobriety, nor to employees discharged for misconduct involving immorality.

36. The 1959 vacation schedule for employees will be as follows:

(A) Employees with eight (8) consecutive calendar months of service will receive one (1) week of vacation with pay based upon 2% of the employee's gross earnings for the first eight (8) months of employment.

[fol. 26] (B) Employees with eighteen (18) consecutive calendar months of service will receive one (1) week

and three (3) days of vacation with pay based upon 3% of the employee's gross earnings for the fifty (50) weeks of the preceding calendar year.

(C) Employees with twenty-one (21) consecutive calendar months service will receive two (2) weeks of vacation with pay based upon 4% of the employee's gross earnings for the fifty (50) weeks of the preceding calendar year.

(D) Employees with ten (10) consecutive years of service will receive three (3) weeks of vacation with pay based upon 6% of the employee's gross earnings ~~for the fifty (50)~~ weeks of the preceding calendar year.

(E) Employees with twenty-five (25) consecutive years of service will receive four (4) weeks of vacation with pay based upon 8% of the employee's gross earnings for the fifty (50) weeks of the preceding calendar year.

(F) Employees will be eligible for the above mentioned vacations on the anniversary date of their employment, but such vacation shall be taken (except by permission of the Company) during the period May 1 through August 31, of each year.

(G) Consecutive calendar months and/or consecutive years shall be used in accordance with and subject to the contents of Paragraph 11 subsection "(A)" through "(J)."

(H) Employees who have completed eight (8) calendar months of continuous employment and who are laid off due to lack of work, or who quit voluntarily, will receive such proportionate vacation pay as may be due them based upon their length of service with the Company.

[fol. 27] (I) The allocation and/or selection of available vacation time will be upon the basis of seniority in each department.

(J) Vacation time up to and including three (3) weeks shall be consecutive, if desired, by the eligible employee. Additional vacation time, which may be due eligible employees, shall be taken at a time mutually agreed upon by the Company and the affected employee.

(K) In the event a legal holiday occurs during a vacation of any employee, said employee will be allocated an additional day of paid vacation to be effective immediately preceding the first day of said employee's vacation or immediately following the final day of said employee's vacation.

(L) Employees vacation pay as may be due will be paid in advance but in no event later than the employee's final day of work immediately preceding the actual vacation time.

(M) Employees whose vacation pay is reduced substantially due to absences from work by virtue of illness, injury or other valid reason, may, at their option, elect to take vacation time off upon the basis of one (1) day for each Ten Dollars ($10.00) or major fraction thereof.

37. A day's pay for a holiday shall be defined as an average day's earnings for the employee.

For employees on straight salary and commission, the base pay portion of average earnings will be paid for the holiday on the pay day following the holiday. Commission earnings for the employees described above will be computed and paid on the basis of an average day's commissions earnings in the previous month and will be paid on the pay day following the holiday or at the regular commissions pay period following the holiday.

For employees on straight commission, holiday pay will be based on one-fifth (1/5) of the weekly average earnings for the previous year.

[fol. 28] 38. The presently-in-effect employee discounts will continue in effect. Four (4) times a year a discount of not less than fifteen (15) per cent will be granted to all

employees on merchandise purchased in the store for their own personal use or the use of their dependents. The Company will set the date for such special discount and will give the employees six (6) days' notice prior to said sale, except that no discount will be granted on food, food products, drugs, cigarettes, or such items as may be exempted by the Company. Such Company exemptions will not be used arbitrarily to defeat the possibility of employee discounts. Employees will at all times receive a discount of twenty (20) per cent on merchandise used to conform to the dress regulations required by the Company. Such discount items include the following:

(A) For female employees: dresses, suits, sweaters, blouses, skirts, dress goods, shoes, hosiery, neckwear, smocks, and belts.

(B) For male employees: shirts, suits, shoes, hose, work clothing, neckwear, and belts.

39. Employees who, in accordance with established Company policy for given departments, use their privately owned automobiles in the business of the Company shall be compensated at the rate of eight cents (8¢) per mile.

40. The Company will provide minimum insurance coverage as follows:

(A) *Life Insurance*: After the completion of six months of continuous service, employees working 20 to 29 hours weekly, $1500 life and $1000 accidental death; those working 30 to 36 hours weekly, $2000 life and $1500 accidental death; those working 37 or more hours weekly, $3000 life and $2000 accidental death.

(B) *Sick and Accident Insurance*: After the completion of two months of continuous service, weekly sickness and accident benefits up to $28 for disability resulting from non-occupational injury or illness [fol. 29] for a period of thirteen weeks beginning with the first day of injury and the eighth day of illness.

(C) *Hospital and Surgical Insurance*: After the completion of two months of continuous service, hos-

pital and surgical expenses incurred by an employee for himself and for his dependents will be reimbursed according to the following schedule:

1. Room and Board charges up to $15 per day for 70 days for the employee and room and board charges up to $12 per day for 70 days for dependents.
2. Surgical expenses not to exceed $200 according to a "schedule of surgical operations."
3. Hospital maternity benefits up to 10 times the daily rate plus obstetrical services in the amount of $50 for a normal delivery, $100 for an abnormal delivery, and $25 in case of miscarriage.
4. Hospital extras up to 20 times the daily rate.

The entire cost of this insurance coverage will be fully paid by the Company.

41. Supper money of $1.50 cash will be paid in accordance with current store practice.

42. The Company will furnish, clean and launder all aprons, uniforms and other garment required by the Company.

[fol. 30]

EXHIBIT C TO AMENDED COMPLAINT

December 30, 1958

Right Reverend Michael J. Doyle
1933 Spielbusch Avenue
Toledo, Ohio

Most Reverend Sir:

In order to make operative Lasalle and Koch's commitments, set forth in the Statement of Understanding and attached Exhibits, transmitted to you, Monsignor Doyle, on December 24, 1958, we herewith agree to the conditions and guarantees of the Statement of Understanding. Attached Exhibits are subject to proofreading to assure conformity with applicable provisions of the expired contract and November 15, 1957 offer through L. M. C.

We agree that the success of the undertaking and stability of labor relations depend upon the good faith of the parties. Such assurances are granted on behalf of the unions.

Please accept our deep expression of gratitude for your conscientious and constructive efforts in the settlement of the dispute.

Respectfully yours,

RALPH HAMILTON, *Secy.-Treas. Local No. 633.*

THELMA HAAS, *Sec'y.-Treas. Local No. 128*

SL:kw
att.

[fol. 31]

EXHIBIT D TO AMENDED COMPLAINT

THE LION DRY GOODS CO.

Toledo, Ohio.

Msgr. Michael Doyle, Chairman,
Labor-Management-Citizens Committee,
Toledo, Ohio

Dear Sir:

In accordance with previous commitments made to you on our behalf, we hand you herewith a statement of understanding, with exhibits, which set forth therein the basis on which the heretofore existing dispute between the Retail Clerks International Association, its Locals No. 633 and No. 128, and our company is to be fully and finally resolved.

The conditions to be performed and met by us are, of course, subject to and conditioned upon the receipt by your organization of guarantees from the respective labor organizations to make the principles enumerated herein completely effective.

We are fully aware that the ultimate and complete success of your efforts in this endeavor will depend upon the good faith which is necessarily a part of any representations made to you. It is in this spirit that we are pleased to hand you this statement of intent with its necessary assurances.

Very truly yours,

DONALD ROSS,

Donald Ross, *President*
The Lion Store.

December
Twenty-fourth
1958

[fol. 32]

Exhibit E to Amended Complaint

1. The Lion Store will warrant to the L-M-C that the Company will not reduce rates of pay presently in effect or withdraw or reduce employee benefit programs currently provided. This assurance includes all improvements offered by the Company through the L-M-C on November 15th, 1957, which are already in effect. No employee will be discriminated against, by reason of Union activities, membership or non-membership. All employees will continue to have job security and no employee will be discharged except for just cause. Wage schedules currently in effect are appended as Exhibit A. Copies of hours and working conditions and other existing benefits, as requested by L-M-C are attached as Exhibit B.

2. Neither the Company nor the Union will interfere with the employee's right to join or not join a union, as provided and guaranteed by the Labor-Management-Relations Act. Nothing contained herein is to be construed as giving recognition to the union unless at some future time within the discretion of the union, the union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board.

3. The Union agrees that it will not request bargaining rights unless it proves its right to represent the employees as provided in Paragraph 2 above; nor will the employer recognize any union except upon certification by the N. L. R. B.; nor will the Company file a petition for election unless a claim for representation is made upon the employer. Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operations of the business.

4. Any individual employee who may have a grievance involving an interpretation or application of or arising under the terms of this understanding with the L-M-C,

[fol. 33] and who has presented such grievance to his supervisor and the Personnel Department without reaching a satisfactory solution, may take his case to the chairman of the L-M-C who in turn shall refer the case to a panel of the L-M-C, whose majority decision and order shall be final and binding. The panel shall render its decision and order within fifteen days after the grievance has been submitted to it. The procedure regulating the hearing of the grievance by the L-M-C panel shall be determined by the panel.

5. The Union will agree that immediately upon receipt of this statement of understanding by the Toledo Labor-Management-Citizens Committee it will cease all picketing, boycotting or other interference with the business of The Lion Store wherever located. The Union, the strikers, and the Company shall withdraw forthwith all petitions, unfair labor practice charges and litigation before the National Labor Relations Board and the Courts and further agree not to institute in the future any litigation involving or arising out of the instant dispute. The Union and the Employer shall execute mutually satisfactory releases, releasing and discharging each other, the International Union, the local unions involved, and representatives of the union in their representative or individual capacity, labor papers, and all other labor organizations or their representatives who acted in concert or cooperation in connection with the dispute, from any and all claims, demands, causes of action, of whatever nature or description arising out of the labor dispute, including but not limited to the strikes, picketing, boycotting, and all other activities which may have taken place up to the present date.

6. This understanding shall become effective in accordance with the letter of transmittal dated December 24, 1958.

THE LION STORE,

DONALD ROSS,
President.

[fol. 34]

EXHIBIT F TO AMENDED COMPLAINT

December 30, 1958

Right Reverend Michael J. Doyle
1933 Spielbusch Avenue
Toledo, Ohio

Most Reverend Sir:

In order to make operative The Lion Store's commitments, set forth in the Statement of Understanding and attached Exhibits, transmitted to you, Monsigner Doyle, on December 24, 1958, we herewith agree to the conditions and guarantees of the Statement of Understanding. Attached Exhibits are subject to proofreading to assure conformity with applicable provisions of the expired contract and November 15, 1957 offer through L. M. C.

We agree that the success of the undertaking and stability of labor relations depend upon the good faith of the parties. Such assurances are granted on behalf of the unions.

Please accept our deep expression of gratitude for your conscientious and constructive efforts in the settlment of the dispute.

Respectfully yours,

RALPH HAMILTON,
Ralph Hamilton,

Sec'y.-Treas.,
Local No. 633.

THELMA HAAS,
Thelma Haas,

Sec'y.-Treas.,
Local No. 128.

SL:kw
att.

[fol. 35]

EXHIBIT G TO AMENDED COMPLAINT

April 7, 1959

Merritt W. Green, Sr.
Green & Kreutz, Attorneys
Security Building
Toledo 4, Ohio

Dear Mr. Green:

This acknowledges your letter of March 23, 1959, protesting the decision of the panel with respect to procedure of union organizers in contacting store employees for the purpose of soliciting union membership.

The agreement of December 24, 1958, provides among other things, that all panel decisions are "final and binding." The decision of the panel in this case was reached after a proper hearing and as panel decisions are final and binding, the panel sees no reason to re-open the matter.

The agreement of December 24, 1958, was certainly arrived at in good faith by all parties. That agreement specifically states that "nothing in the agreement will preclude an employee representative from entering the store to communicate with the employees on the latter's own time and provided it does not interfere with the operations of the store." It is the intent and objective of the panel members to make decisions in accord with the agreement and it is the opinion of the panel that the decision rendered on March 16, 1959, is in line with this agreement.

In respect of the grievances presented to the panel by Mrs. Ruth Morris regarding her dismissal from The Lion Store and the grievances presented by Bernard J. Mahan, Clement R. Walters, and Knox Dunlop, regarding dependent insurance coverage deductions, the panel decided that it should meet with the representatives of both the Retail Clerks Union and the Retail Merchants Association to discuss these grievances before decisions regarding them should be rendered by the panel.

The panel is setting up a meeting at the Catholic Offices Building for Thursday, April 16, at 10 a.m.

[fol. 36] Trusting that you may be able to attend this meeting and with every personal good wish, I remain

Very sincerely yours,

RT. REV. MSGR. M. J. DOYLE.

MJD:dar

IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 29, 1959

First Defense

Now come the defendants, the Lion Dry Goods, Inc., and Lasalle's, a division of R. H. Macy & Co., and for their first defense say the Court lacks jurisdiction over the subject matter.

Second Defense

The defendants say that the amended complaint fails to state a claim against either defendant upon which relief can be granted.

Third Defense

1. The defendants admit the allegations of fact contained in the first, second, third, and fourth paragraphs of the amended complaint.

2. The defendants admit that on the 24th day of December, 1958, picketing of the premises of the defendant Lasalle's by members of the plaintiff unions was terminated as a result of assurances given to a mediation panel of the Toledo Labor-Management-Citizens Committee that striking employees of the defendant Lasalle's would be reemployed at a subsequent date, but deny that any assurances given by the defendants to the Toledo Labor-Man-

[fol. 37] agement-Citizens Committee were for the benefit of the plaintiff labor unions.

3. The defendants admit that Exhibits A and B attached to the plaintiffs' amended petition are copies of a letter, a statement, and exhibits delivered to the chairman of the Toledo Labor-Management-Citizens Committee by the defendant Lasalle's; that Exhibits D and E attached to plaintiffs' amended petition are copies of a letter and a statement given to the chairman of the Toledo Labor-Management-Citizens Committee by the defendant Lion Store; but deny that any agreement was made between the defendants, or either of them, and the plaintiff unions.

4. The defendants, for want of knowledge, deny that Exhibits C and F attached to the amended petition of the plaintiffs were transmitted to Msgr. Michael J. Doyle on the dates set forth in the amended petition.

5. The defendants deny any allegations of fact which, perchance, might be included in the statement of legal and other conclusions appearing in the last paragraph of Item No. 6 of the amended complaint and in Item No. 7, following immediately thereafter, the accuracy or propriety of such conclusions being questioned by the defendants.

6. The defendants deny that there is in existence any contract between the plaintiffs, or either of them, and the defendants, or either of them, or that there is in existence any agreement between the parties, collectively or singly, whereby the Toledo Labor-Management-Citizens Committee is given any right or authority to arbitrate any grievance which the plaintiffs might claim to have.

7. The defendants deny that the Toledo Labor-Management-Citizens Committee, or any panel thereof, has the right to render a decision which would require these defendants to recognize the plaintiffs herein, for any purpose, or to permit the employees of the plaintiff unions access to the premises of either of the defendants, for any purpose.

[fol. 38] 8. The defendants deny that any recognition was given to any decision of the Toledo Labor-Management-

Citizens Committee by way of a request for reconsideration of a decision of a panel of said Committee with regard to any rights claimed by the plaintiffs.

9. Further answering, the defendants say that on and prior to December 24, 1958, there was pending before the National Labor Relations Board petitions filed by each of the defendants herein requesting that elections be held among the employees of each of defendants' stores in order that a determination be made under the provisions of the Labor-Management Relations Act of 1947 to determine whether the employees of each of the defendants desired the plaintiff unions as their representative in collective bargaining with the defendant employers.

10. The defendants say that the aforesaid petitions for elections among the employees of the defendants were, subsequent to December 24, 1958, withdrawn by the defendants, because the plaintiffs no longer claimed to represent a majority of the employees of either of the defendants and, in fact, asserted that neither of the defendants, by any act done or assurance given by and through the Toledo Labor-Management-Citizens Committee, recognized the plaintiffs as the bargaining agent of any employees of the defendants; and, further, that the plaintiffs would not request bargaining rights on behalf of employees of either of the defendants unless they, the plaintiffs, or either of them, proves the right to represent the said employees in an election conducted by the National Labor Relations Board, as provided in the Labor-Management Relations Act of 1947.

11. Further answering, the defendants say that there is not in existence a contract between the plaintiffs and the defendants, or either of them, as contemplated by or provided for in the Labor-Management Relations Act of 1947; and, further, that the plaintiffs have not been certified as the collective bargaining representatives of employees of either of the defendants following any election held by [fol. 39] the National Labor Relations Board or, further, that the plaintiffs and the defendants have not negotiated,

discussed, or agreed to negotiate a collective bargaining contract of any kind since December 24, 1958, nor have the defendants since that time held any conversations with the plaintiffs, or any of its agents, or given or made any assurances to the plaintiffs, or any third for the benefit of the plaintiffs, with respect to wages, hours, and other terms and conditions of employment for or on behalf of the plaintiff unions, or members thereof.

WHEREFORE, the defendants pray that the petition of the plaintiffs be dismissed; that final judgment be entered for each defendant and against the plaintiffs; and that each defendant recover its costs.

.....

Attorneys for the Defendants.

MERRITT W. GREEN,
400 Security Building,
Toledo, Ohio,
For the Defendants.

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed November 6, 1959

It is hereby stipulated by and between counsel for plaintiffs and counsel for the defendants that all exhibits attached to the amended complaint are true copies of the communications and documents they are represented to be and may be introduced in evidence as such, and may be considered by the Court to the extent material and relevant to the issues involved in either or both causes of action.

It is further stipulated by and between counsel for the respective parties that the documents attached to the answer brief of the defendants, dated December 30, 1958, February 19, 1959 and April 13, 1959, are copies of letters [fol. 40] which were written by counsel for the defendants to Monsignor Michael Doyle and were received by him, and further, that the communication attached to defendants'

answer brief dated March 12, 1959, is a true and correct copy of a memorandum sent to counsel for the defendants by Monsignor Doyle, and that all of these copies of said documents and communications may be accepted in evidence for consideration by the Court to the extent material and relevant to all issues in either or both causes of action.

It is further stipulated by and between counsel for the respective parties that Merritt W. Green, counsel for the defendants, appeared on behalf of the defendants at a meeting held on March 5, 1959 in the Catholic Charities Building, Toledo, Lucas County, Ohio, which said meeting was presided over by Monsignor Michael Doyle and assumed by all parties in attendance to be a meeting of a panel chosen by the Toledo Labor-Management-Citizens Committee to perform proper functions delegated to such a panel under the provisions of Section 7 of plaintiffs' Exhibit B at page 2, and Section 4 of plaintiffs' Exhibit E at page 2, both of which exhibits are set forth in the amended complaint. (Statements of Understanding delivered to Monsignor Doyle by Lasalle's and The Lion Store respectively.)

It is further stipulated by and between counsel for the parties that the plaintiff Unions and the defendants, individually, have not engaged in collective bargaining with respect to wages, hours and other terms and conditions of employment pertaining to employees of either of the defendants or for the purpose of the negotiation of an agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein any agreement negotiated or reached between the parties; and it is further stipulated between counsel that none of the rates of pay, wage schedules, terms and conditions of the personnel policy and program, or other provisions or conditions contained in the entire plaintiffs' Exhibit B were [fol. 41] negotiated as a result of bargaining or negotiations between either of the defendants and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the plaintiff Unions; and it is further stipulated

that all of the provisions contained in plaintiffs' entire Exhibit B, with the exception of Item No. 40 appearing at the last page of said exhibit, were in force and effect prior to December 24, 1958. Nothing in this paragraph is to preclude the Court from finding that the settlement of December 24, 1958, was a collective bargaining agreement.

It is further stipulated by and between counsel for the parties that the employee cafeterias in the downtown stores of the defendants and of the Lamson Brothers Company are located in areas in each of the stores not open to customers; and it is further stipulated between counsel that the Lasalle employees, McGinnis and Thal, were, prior to leaving their employment because of a strike on or about November 23, 1957, employed as salesladies in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that upon their return to work at Lasalle's after December 24, 1958, each was employed as a saleslady in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that the only difference in their work assignments upon their re-employment after December 24, 1958 was in the station to which each was assigned to work within the Men's Furnishings Department; the one formerly assigned to the station where men's shirts were sold was assigned to the station where men's sweaters were sold, with the other being assigned to stations in reverse of the ones just mentioned, that is, her later assignment being shirts as compared to her former assignment of sweaters.

/s/ JOSEPH E. FINLEY,
Attorney for Plaintiffs.

/s/ MERRITT W. GREEN,
Attorney for Defendants.

[fol. 42]

IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Filed December 21, 1959

KLOEB, *J.*:

Plaintiffs filed this action in this Court pursuant to Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A., Sec. 185 (a).

The amended complaint filed June 19, 1959 outlines two causes of action against the defendants, and prays in the first cause of action for an order of the Court requiring the defendants to permit non-employee representatives of plaintiffs to have access to areas of the stores of defendants, to wit, employees' cafeterias, which are not open to customers. In connection with the second cause of action, plaintiffs seek an order of the Court requiring the defendant LaSalle's to place two employees who were returned to work after the strike had ended on December 24, 1958, in their position classifications, and at the precise stations in the Men's Furnishings Department that they had occupied prior to the strike.

Attached to the amended complaint is Exhibit A, a letter from defendant LaSalle's to the chairman of the Toledo Labor-Management-Citizens' Committee, a Committee that had been engaged in mediating the differences between the respective parties and matters involved in the strike, which letter was accompanied with a "Statement of Understanding," with exhibits, all being offered to the Labor-Management-Citizens' Committee by the defendant LaSalle's.

There is also attached to the amended complaint Exhibit C, which is a letter from plaintiffs addressed to the Labor-Management-Citizens' Committee, in which they agree to the conditions and guarantees of the "Statement of Understanding."

There are also attached to the amended complaint Exhibits D, E and F, which are documents pertaining to defendant Lion Dry Goods, Inc., and which are comparable to the LaSalle exhibits heretofore referred to.

Under date of June 29, 1959, defendants filed their answer to the amended complaint, in which they set up three

[fol. 43] defenses, first, that the Court lacks jurisdiction over the subject matter, second, that the amended complaint fails to state a claim against either defendant upon which relief can be granted, and, third, that there is not in existence a contract between the plaintiffs and the defendants or either of them, as contemplated by or provided for in the Labor-Management Relations Act of 1947, and particularly Section 301 (a) thereof.

On October 15, plaintiffs filed their brief and, on October 26, defendants filed an answer brief. On November 2, plaintiffs filed a reply brief.

On November 6, in connection with oral argument, the parties filed a stipulation, which reads in part as follows (pages 2 and 3):

> "It is further stipulated by and between counsel for the parties that the plaintiff Unions and the defendants, individually, have not engaged in collective bargaining with respect to wages, hours and other terms and conditions of employment pertaining to employees of either of the defendants or for the purpose of the negotiation of an agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein any agreement negotiated or reached between the parties; and it is further stipulated between counsel that none of the rates of pay, wage schedules, terms and conditions of the personnel policy and program, or other provisions or conditions contained in the entire plaintiffs' Exhibit B were negotiated as a result of bargaining or negotiations between either of the defendants and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the plaintiff Unions; and it is further stipulated that all of the provisions contained in plaintiffs' entire Exhibit B, with the exception of Item No. 40 appearing at the last page of said exhibit, were in force and effect prior to December 24, 1958. Nothing in this paragraph is to preclude the Court from finding that [fol. 44] the settlement of Dec. 24, 1958, was a collective bargaining agreement.

"It is further stipulated by and between counsel for the parties that the employee cafeterias in the downtown stores of the defendants and of the Lamson Brothers Company are located in areas in each of the stores not open to customers; and it is further stipulated between counsel that the LaSalle employees, McGinnis and Thal, were, prior to leaving their employment because of a strike on or about November 23, 1957, employed as salesladies in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that upon their return to work at LaSalle's after December 24, 1958, each was employed as a saleslady in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that the only difference in their work assignments upon their re-employment after December 24, 1958 was in the station to which each was assigned to work within the Men's Furnishings Department; the one formerly assigned to the station where men's shirts were sold was assigned to the station where men's sweaters were sold, with the other being assigned to stations in reverse of the ones just mentioned, that is, her later assignment being shirts as compared to her former assignment of sweaters."

It appears that, in November of 1957, plaintiffs, who at some prior time had been the recognized bargaining agents for the Retail Associates, Inc., comprised of four downtown department stores in Toledo, Ohio, and including the two defendants herein, called a strike against the four members of the Retail Associates, Inc. During the period of the strike, from November of 1957 to December 24, 1958, plaintiffs were not and do not claim to have been and are not now the recognized majority representatives of the employees of defendants. They do not claim to have such rights. They admit that they do not represent a majority [fol. 45] of the employees of the defendants, but they say that they do represent some employees and that because of this representation they are entitled to petition for the enforcement of a contract under Section 301 (a).

A few days prior to December 24, 1958, a plan was advanced by the chairman of the Toledo Labor-Management-Citizens' Committee whereby it was suggested that, if defendant LaSalle's would re-employ the strikers, plaintiffs would disclaim that they represented a majority of the employees of defendants. At that particular time LaSalle's was the only store where workers were out on strike.

Upon the presentation to the Labor-Management-Citizens' Committee of the exhibits heretofore referred to and that are attached to the amended complaint, picketing ceased and the strike was declared off. Employees of defendants LaSalle's were restored to work in due course in accordance with the Statement of Understanding.

It appears now that the defendants refuse to permit certain representatives of plaintiffs to enter the employees' cafeteria for the purpose of soliciting membership. This the plaintiffs complain of in their first cause of action in the amended complaint. Paragraph 6 of Exhibit B attached to the complaint reads in part as follows:

> "• • • Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business."

Defendants claim that the employees' cafeteria is an area which is not open to customers and that, therefore, plaintiffs' agents are precluded from communicating with defendants' employees in these areas. Plaintiffs are of the opinion that they have a right to communicate with defendants' employees in these areas provided such communication is on the employees' non-working time and in no way interferes with the operation of the business of the defendants.

[fol. 46] Plaintiffs' second cause of action is based on the ground that, while employees McGinnis and Thal, who up to December 24, 1958, were striking employees, and were re-employed as salesladies in the Men's Furnishings Department following their return to work, they were not again stationed at the exact counters theretofore occupied

by them but that they were caused to exchange their positions at the shirt and sweater counters. There is no dispute but that the rate of pay was not reduced upon their return to work and that their earnings and earning opportunities are not changed.

The grounds relied upon in these two causes of action appear to be tenuous indeed and to be based on grievances that are not weighty in character. However, they do provide a "causus belli." Whether there is justification for taking the time of a Court because of these differences between the parties is open to grave question.

It is plaintiffs' position that the Statements of Understanding presented by defendants to the Labor-Management-Citizens' Committee and the subsequent concurrence in these statements by plaintiffs constitute a contract, at least a contract for the benefit of plaintiffs, and that it is, therefore, such a contract as is contemplated by Section 301 (a) of the Act.

Section 301(a) of the Act, 29 U. S. C. A. Sec. 185(a), reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

It is the contention of the defendants that, while Section 301(a) refers to contracts between an employer and a labor organization representing employees, this has reference to collective bargaining contracts, or agreements ar- [fol. 47] rived at through collective bargaining, and could not have reference to the situation that obtains here.

From a study of the legislative background of the Act, and from certain decisions that we have examined, we are of the opinion that the strike settlement agreement that was concluded on December 24, 1958 is not such a contract as is contemplated by Section 301(a) of the Act, and that,

therefore, we do not have jurisdiction over the subject matter.

The plaintiffs have cited and apparently rely upon the cases of *Local 19, etc.* v. *The Buckeye Cotton Oil Company*, 236 Fed. (2d) 776, and *A. L. Kornman Company* v. *Amalgamated Clothing Workers of America*, 264 Fed. (2d) 733, cert. den. Oct. 12, 1959.

These are cases that were decided by the Sixth Circuit Court of Appeals but, upon examination, we find that they both grow out of disagreements over existing collective bargaining agreements that were duly entered into by the parties under and in accordance with the provisions of the Act.

In the case at bar, the Statements of Understanding specifically point out that nothing contained therein is to be construed as giving recognition to the Union unless, at some future time within the discretion of the Union, the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. At no time have plaintiffs been so certified by the National Labor Relations Board. The Statements of Understanding further provide that the Union agrees that it will not request bargaining rights unless it proves its right to represent the employees, and that the employer will not recognize any Union except upon certification by the National Labor Relations Board.

We believe that the Act, in lodging authority in any District Court of the United States, contemplates such authority to be exercised where there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees in an industry affecting commerce and that it thereby contem- [fol. 48] plates a collective bargaining agreement. The agreement that we are here considering is a strike settlement agreement which we cannot construe as having been entered into for the benefit of plaintiffs.

In the case of *Schatte, et al.* v. *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of United States and Canada, et al.*, 84 Fed. Supp. 669, aff. 182 Fed. (2d) 158, cert. den. 340 U. S. 827, we find the following (p. 672, par. 4):

> "Whatever else may be said (and a great deal has been said in scores of pages of briefs and more than three full days of argument), any right of recovery under Section 301 must rest upon a *contract* and its asserted violation. *The whole Act relates to labor contracts, hence it must be a contract contemplated by the Act, i.e., a collective bargaining contract or contract relating to fair or unfair labor practices.* • • •" (Emphasis supplied.)

On page 673, pars. 7 and 8, we find the following:

> "The plaintiffs contend that in any event they are appropriately parties plaintiff under Rule 23, Federal Rules of Civil Procedure, 28 U. S. C. A., relating to class suits. Whether they do or could qualify under that rule is not necessary to determine as the provisions of Sec. 301 are inconsistent with Rule 23, Federal Rules of Civil Procedure, and must therefore prevail. *Sec. 301 is a special and limited grant of jurisdiction which must be strictly construed.* This is especially so in the light of the history of legislation dealing with labor relations and disputes such as the Clayton Act, 15 U. S. C. A. § 17, the Norris-LaGuardia Act, 29 U. S. C. A. § 101 et seq., the Wagner Act, 29 U. S. C. A. § 151 et seq., and the Act under consideration." (Emphasis supplied.)

We are of the opinion that collective bargaining contracts between a Union and an employer were the only "contracts" intended to be actionable in a District Court of the United States under the provisions of Section 301(a), and that [fol. 49] none of the factors which give substance to the rights of Unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants. We, therefore, conclude that the Court is without jurisdiction to entertain this case, and the complaint is, therefore, dismissed.

Defendants may prepare and file findings of fact and conclusions of law drawn in accordance with this Memorandum Opinion within fifteen (15) days, and the plaintiffs

may, within ten (10) days thereafter, file any suggested amendments or additions thereto.

(signed) FRANK L. KLOEB,
United States District Judge.

Toledo, Ohio.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
Filed January 29, 1960

This cause came on for trial and the Court, having considered the pleadings, the stipulations of the parties and arguments of counsel therefor, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACTS

1. The "statement of understanding" given by each of the defendants to the Toledo Labor-Management Citizens Committee on December 24, 1958 was a strike settlement statement.

2. The plaintiffs are not now and were not on December 24, 1958, the recognized majority representatives of the employees of the defendants, or either of them.

3. The statements of understanding given the Toledo Labor-Management-Citizens Committee are not collective [fol. 50] bargaining contracts negotiated by or on behalf of the plaintiffs with either of the defendants.

4. There is no existing collective bargaining contract between the plaintiffs and either of the defendants.

CONCLUSIONS OF LAW

1. The statement of understanding given by each of the defendants on December 24, 1958, is not a contract as is contemplated by Section 301 (a) of the Labor-Management Relations Act of 1947.

2. This Court is without jurisdiction over the subject matter of this action.

3. The complaint of the plaintiffs should be, and therefore is, dismissed.

FRANK L. KLOEB,
Judge of the United States District Court for the Northern District of Ohio, Western Division.

Approved:

MERRITT W. GREEN,
Attorney for Defendants.

JOSEPH E. FINLEY,
Attorney for Plaintiffs.

IN UNITED STATES DISTRICT COURT

ORDER AND JUDGMENT—Filed January 29, 1960

The issues in the above entitled action having been regularly brought on for trial before the Court without a jury, and in accordance with the agreements and stipulations of counsel for the presentation of the evidence, and the parties having appeared by their respective counsel and the Court having filed its opinion on the 21st day of December, 1959 and subsequently thereto, the Court having made its find-
[fol. 51] ings of fact and conclusions of law directing judgment as hereinafter provided, it is hereby

ORDERED, ADJUDGED and DECREED that the complaint of the plaintiff be and hereby is dismissed at plaintiff's costs.

FRANK L. KLOEB,
Judge.

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

STIPULATION—Filed in the United States Court of Appeals, Sixth Circuit

It is hereby agreed and stipulated to on this ..... day of ....., 1960, by and between counsel for appellants, Joseph E. Finley, and counsel for appellees, Merritt W. Green, in accordance with Rule 16 (5) of the Rules of this Court, that a Joint Appendix shall be filed. Such Joint Appendix shall contain the following matter:

(a) Amended Complaint.

(b) Answer.

(c) Stipulation of the parties entered into at time of hearing, November 6, 1959.

(d) Memorandum opinion of the District Court.

(e) Findings of Fact and Conclusions of Law.

(f) Order and Judgment dismissing the complaint.

It is further stipulated that the expense of printing the joint appendix shall be taxed as costs by the prevailing party in such amount as has been expended by him.

JOSEPH E. FINLEY,
RUDD, OBER, FINLEY AND MILLER,
Attorney for Appellant.

MERRITT W. GREEN,
Attorney for Appellee.

[fol. 52]

IN THE UNITED STATES COURT OF APPEALS

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
November 29, 1960

Before: McAllister, Chief Judge, Martin and Weick, Circuit Judges.

This cause is argued by Joseph E. Finley for appellants and by Merritt William Green for appellees and is submitted to the court.

[fol. 53]

IN THE UNITED STATES COURT OF APPEALS

JUDGMENT—December 15, 1960

This appeal from the judgment of the United States District Court, dismissing the complaint of appellants, has been heard and considered upon the record and upon the oral arguments and briefs of the parties.

This court is of opinion that the district court correctly construed Section 301 of the Labor-Management Relations Act of 1947 [29 U. S. C. A., section 185(a)] and was free from error in holding that it had no jurisdiction over the subject matter of the litigation. The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees. We think that the trial court was correct in reaching the [fol. 54] conclusion that collective bargaining contracts between a union and an employer are the only contracts intended to be actionable in a United States District Court under the provisions of section 301(a).

In our judgment, United States District Judge Kloeb was right in concluding that he was without jurisdiction in this case. He, therefore, properly dismissed the complaint.

Accordingly, for the reasons stated in the opinion of the District Judge, the judgment of the district court is affirmed.

It is so ordered.

John D. Martin, United States Circuit Judge.

[fol. 55] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 56]

SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—March 7, 1961

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 28, 1961.

Potter Stewart, Associate Justice of the Supreme Court of the United States.

Dated this 7th day of March, 1961.

[fol. 57]

SUPREME COURT OF THE UNITED STATES

No. 850—October Term, 1960

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNIONS NOS. 128 AND 633, Petitioners,

vs.

LION DRY GOODS, INC., et al.

ORDER ALLOWING CERTIORARI—May 8, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.